IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13009 of 2006
Date of decision:24.10.2006

Punjab State Cooperative Supply & Marketing Federation Limited

....Petitioner

versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rajesh Garg, Advocate, for the petitioner.

JUDGMENT:

1. This writ petition challenges the constitutional validity of Proviso to section 148 of the Income Tax Act, 1961 (for short, 'the Act') which makes limitation of 12 months for issuing notice under section 143(2) of the Act, inapplicable to returns filed after 1.10.1991 for re-assessment/re-computation of tax if such re-assessment/re-computation was otherwise within limitation.

2. Case of the petitioner is that it had filed its return for the assessment year 1989-90 declaring Nil income claiming exemption under section 80P of the Act on 31.10.1989, which was accepted. On 11.4.1996, case of the petitioner for assessment year 1991-92 was re-opened and a notice under section 148 of the Act was issued to the petitioner in response to which return was filed. Thereafter, notice was issued under section 143 (2) of the Act,which was beyond 12 months from the end of the month in which return was filed and assessment was framed under sections 143/148 of the Act on March 30, 1998. The same was set aside by the CIT(Appeals) on the ground that notice under section 143(2) of the Act was not within the period of limitation. Against the order passed by the CIT(A), the revenue went in appeal before the Tribunal, which is pending.

3. Vide Finance Act 2006, Section 148 has been amended w.e.f

1.10.1991. The said provision before and after the amendment is as under:-

Before Amendment

"148. **Issue of notice where income has escaped assessment.**

(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income to any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:"

After amendment

"148. **Issue of notice where income has escaped assessment.**

(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or theincome of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002(20 of 2002) but

> before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:
>
> Provided further that in a case-
> (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and
>
> (b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.
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> Explanation.- For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.
>
> (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

4. It is submitted that normal period specified under section 143 (2) of issuing notice is 12 months but the same has been made inapplicable for the period during 1.10.1991 and 30.9.2005 to returns filed after 1.10.1991 for re-assessment/re-computation of tax if such re-assessment/re-computation was otherwise within limitation. It is submitted that apart from vice of retrospectivity, the provision was discriminatory for selecting special period of limitation for the specified period, thereby creating a special class arbitrarily without there being any nexus of such classification with the object of the statute.

4.1 Learned counsel for the petitioner has relied upon following judgments in support of his submissions:-

(1) KT Moopil Nair v. State of Kerala, (1961) 3 SCR 77

(2) SK Dutta, Income tax Officer. v. Lawrence Singh Ingty, AIR 1968 SC 658;

(3) Anandji Haridas and Co.(P) Limited v. SP Kasture, (1968) 1 SCR 661;

(4) State of Kerala v. Haji K.Haji K.Kutty Naha and others etc., (1969) 1 SCR 645;

(5) Ayurveda Pharmacy and another v. State of Tamil Nadu, (1989) 2 SCC 285;

(6) Model Town Residents Association v. State of Punjab, (2002) 132 PLR 88.

5. We have considered the submissions made on behalf of the petitioner and perused the decisions relied upon.

6. No doubt, Article 14 prohibits discrimination and if a provision is discriminatory, the same will be liable to be declared unconstitutional. However, we are unable to hold that the provision, in the present case, is violative of Article 14. The Proviso is applicable to a defined class where return has been filed during 1.10.1991 and 30.9.2005 in response to notice served under section 143(2) after expiry of 12 months but before expiry of time limit for making assessment, re-assessment or re-computation under the Act. Thus, the said provision validates notices which were within the time for assessment, re-assessment or re-computation, though beyond period of 12 months specified in section 143(2). This appears to have been necessitated on account of period of 12 months specified under section 143 (2) of the Act being made applicable also to re-assessment or recomputation on account judicial pronouncements taking different views on the subject, which according to Legislature, was not its intention. Such intention is sought to be clarified by the impugned amendment. Reference may be made to orders of the ITAT in **ACIT v. Smt. Jhoti Devi,** 2004(84) TTJ (JD) 689 and **Raj Kumar Chawla v. ITO,** 2005(94) TTJ (Del) (SB) 1245, **Sharma & Company vs. Assistant Commissioner of Income tax**, (2004) 85 TTJ (Asr) 1.

6.1 It will also be necessary to notice the legislative history of the relevant provisions. Section 143(2) of the Act was amended vide Direct

Tax laws (Second Amendment) Act, 1989 w.e.f 1.4.1989 and thereafter by Finance Act 2 of 1989 w.e.f 1.11.1991. Amendments were also simultaneously made, inter-alia, to the provisions of Sections 147 to 149 and 153. There were also further amendments by Finance Act 2002 w.e.f 1.6.2000. Question arose whether limitation specified under section 143(2) for giving notice will control the limitation provided under sections 147, 149 and 153. One interpretation was that only procedure under Section 143 (2) was required to be followed for re-assessment but the limitation having been separately provided for the said purpose, period specified under section 143(2) was not to control the limitation for re-assessment. Contrary view was expressed by certain judicial pronouncements by the Tribunal in some orders noticed above. The Legislature with a view to remedy the situation, carried out amendment vide Finance Act 2006 w.e.f 1.10.1991 upto 30.9.2005, validating notice and assessment/reassessment/recomputation if the same were beyond the time specified under section 143(2) but within the time specified under section 153(2).

6.2 In **National Agricultural Cooperative Marketing Federation of India Limited and another v. Union of India and others**, AIR 2003 SC 1329 = (2003) 260 ITR 548, the Hon'ble Supreme Court examined similar issue and held:

> "A validating clause coupled with a substantive statutory change is therefore only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.
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> By the impugned amendment, the legislature has substituted the word "of" which occurred in Section 80-P(2)(*a*)(*iii*) and which had been construed by this Court in 1998 as "belonging to", with the phrase "grown by". The clear effect of the substitution, in keeping with general principles relating to amendments, would be that Section 80-P(2)(*a*)(*iii*) must be read as if the substituted phrase were included from the date that the section was introduced in the statute viz. 1-4-1968.
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> In making this change, the legislature does not "statutorily overrule" this Court's decision in Kerala

State Coop. Marketing Federation Ltd., (1998) 231 ITR 814, as has been contended by the appellant. Overruling assumes that a contrary decision is given on the same facts or law. Where the law, as in this case, has been changed and is no longer the same, there is no question of the legislature overruling this Court.

As has been held in Ujagar Prints (II) v. Union of India, (1989) 179 ITR 317: (1989) 3 SCC 488, 517 (page 347):

"A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating infractors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature — granting legislative competence — the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant."

A somewhat similar situation arose in connection with Section 73 of the Bombay Municipal Boroughs Act, 1925 which allowed the municipality to levy "a rate on buildings or lands or both situated within the municipal borough". Rule 350-A made under that Act provided for the rate on land at a percentage evaluation based upon capital. The rule was held to be ultra vires in Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad , (1964) 2 SCR 608; AIR 1963 SC 1742, on the ground that the word "rate" as was understood in the legislative practice of India and used in Section 73 did not allow for an impost as provided under Rule 350-A. A Validation Act was passed subsequent to the decision in Patel Gordhandas Hargovindas redefining the word "rate" in Section 73 itself. The constitutionality of the Validation Act was challenged. In dismissing the challenge, this Court in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality,(1971) 79 ITR 136, held that the legislature could exercise its undoubted powers of redefining the word "rate" in Section 73 to validate the assessments earlier made under Rule 350-A. The Court held that when a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively(page 140):.

"It is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to

reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

Once the circumstances are altered by legislation, it may neutralise the effect of the earlier decision of the Court which becomes ineffective after the change of the law.

Similarly in Krishnamurthi & Co. v. State of Madras, (1973) 31 STC 190; (1973) 2 SCR 64; AIR 1972 SC 2455, the Madras General Sales Tax Act, 1959 (as it stood) provided under Entry 47 for tax on "lubricating oils, all kinds of mineral oils (not otherwise provided for in this Act), quenching oils and greases w.e.f. 1-4-1964". The question was whether this entry covered furnace oil. The Madras High Court construed the phrase and came to the conclusion that it did not. The legislature then enacted an Amendment Act in 1967. Entry 47 was amended — so as to expressly provide that furnace oil would be subjected to tax. The Act was made effective from 1964. The Act was challenged as being unreasonable since it retrospectively made the dealers liable for sales tax which they had not passed on to others. The challenge was negatived and it was said that: (page 197 of 31 STC and page 2459 of AIR 1972):

"The object of such an enactment is to remove and rectify the defect in phraseology or lacuna of other nature and also to validate the proceedings, including realisation of tax, which have taken place in pursuance of the earlier enactment which has been found by the court to be vitiated by an infirmity. Such an amending and validating Act in the very nature of things has a retrospective operation. Its aim is to effectuate and carry out the object for which the earlier principal Act had been enacted. Such an amending and validating Act to make 'small repairs' is a permissible mode of legislation and is frequently resorted to in fiscal enactments."

Again when the question arose whether factory and other buildings were "houses" for the purpose of levy of house tax, the High Court held that the word "house" could not be construed to include factories and other buildings. Pending the appeal from the High Court's decision before this Court, the word "house" was legislatively redefined to include factories and other buildings with retrospective effect. This Court in Govt. of A.P. v. Hindustan Machine Tools Ltd., (1975) 2 SCC 274; AIR 1975 SC 2037, rejected the challenge to the amendment holding that this was a permissible legislative exercise. It was held that the legislature had not overruled or set aside the judgment of the High

> Court but had removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances. This enunciation of the law has been noted with approval by the Constitution Bench in State of T.N. v. Arooran Sugars Ltd., (1997) 1 SCC 326; AIR 1997 SC 1815."

6.3 In view of above, amendment in question is merely with a view to "cure" the statute so as to make it correctly represent the legislative intention that period of limitation under section 143(2) of the Act did not control the period for reassessment which was specified in other provisions of the Act.

6.4 As regards violation of Article 14, it is well settled that though, discrimination is prohibited, Article 14 does not prohibit classification for legitimate purposes, even if it may produce some inequality. The classification must be based upon real and substantial distinction having reasonable nexus with the object sought to be achieved by such classification. In **The State of Bombay and another v. FN Balsara**,AIR 1951 SC 318, Fazl Ali,J. summed up meaning and scope of Article 14 in following words:-

> "1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.
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> 2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class and yet the law hits only a particular individual or class.
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> 3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons often require separate treatment.
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> 4. The principle does not take away from the State the power of classifying persons for legitimate purposes.
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> 5. Every classification is in some degree likely to

produce some inequality and mere production of inequality is not enough.

6. If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

6.5 The said principles have been followed by the Hon'ble Supreme Court till date. Reference may be made to some of the judgments, namely **The State of West Bengal v. Anwar Ali Sarkar and another,** AIR 1952 SC 75, **Lachmandas Kewalram and another v. State of Bombay**, AIR 1952 SC 235, ***Ameerunnissa Begum v. Mahboob Begum,*** AIR 1953 SC 91, **Khandige Sham Bhat and K.Krishna Bhatta v. Agricultural Income Tax Officer, Kasaragod and another,** AIR 1963 SC 591, **Income-tax Officer, A Ward, Sitapur v. M/s. Murlidhar Bhagwan Das,** AIR 1965 SC 342, **Rustom Cavasjee Cooper v. Union of India,** AIR 1970 SC 564, **The Amalgamated Tea Estates Co. Limited v. The State of Kerala,** AIR 1974 SC 849, **The Superintendent and Remembrancer of Legal Affairs, W.Bengal v. Girish Kumar Navalkha and others,** AIR 1975 SC 1030, In re:**The Special Courts Bill, 1978,** AIR 1979 SC 478, **Kerala Hotel and Restaurant Association and others v. State of Kerala and others,** AIR 1990 SC 913, **Shashikant Laxman Kale and another v. Union of India and another**, AIR 1990 SC 2114, **Union of India and others v. No.664950/M Havildar/clerk SC Bagri**, AIR 1999 SC 1412, **M/s. Satnam Overseas (Export) v. State of Haryana and another etc.**, AIR 2003 SC 66, **John Vallamattom and another v. Union of India**, AIR 2003 SC 2902, **People's Union for Civil Liberties and another v. Union of India and others,** AIR 2004 SC 1442, **M.P.Rural Agriculture Extension Officers Association v. State of M.P. And another,** AIR 2004 SC 2020.

6.4 In ***Ameerunnissa Begum's*** case (supra), B.K.Mukherjea,J.,

observed:

> **"11.** The nature and scope of the guarantee that is implied in the equal protection clause of the Constitution have been explained and discussed in more than one decision of this Court and do not require repetition. It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per so amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view."

6.5 In every given case, the court has to go into the question of object, nature and effect of classification. The classification may be based on diverse factors – historical, geographical, economic, social, scale of operation, temporal, persons, commodities, nature of trade or otherwise. The classification must be for a public purpose and be based on real and substantial distinction having just and reasonable nexus with the object sought to be achieved and must not be arbitrary, artificial and evasive.

6.6 In the field of economic activities/taxation, legislature is allowed greater latitude on account of complex problems which do not have doctrinaire or straight-jacket solutions. In ***R.K. Garg v. Union of India,*** AIR 1981 SC 2138, it was observed:

> **"8.** Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to

legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicit ously expressed than in Morey v. Doud, (1957) 354 us 457 where Frankfurter, J., said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Roig Refining Co., (1950) 94 L ed 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable

> amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

6.7 This principle has been followed in a number of decisions including **Bharat Hari Singhania and others etc. v. Commissioner of Wealth tax (Central) and others,** AIR 1994 SC 1355, Para 34, **Tata Motors Limited v. State of Maharashtra and others**, AIR 2004 SC 3618, **Mardia Chemicals Limited etc. v. Union of India and others etc**., AIR 2004 SC 2371 and **State of Gujarat and others v. Akhil Gujarat Pravasi V.S.Mahamandal and others,** AIR 2004 SC 3894. The judgments relied upon by the learned counsel for the petitioner also reiterate the same principles.

7. In the present case, the classification is for a different treatment to the assessees who filed return during the period 1.10.1991 to 30.9.2005 and were subsequently given notice of re-assessment within permissible limitation to frame re-assessment but beyond period specified under section 143(2). Objection of learned counsel for the petitioner is that this period has been arbitrarily selected, which violates Article 14. Having regard to legislative history of the relevant provisions noticed above, this contention has no merit. The situation sought to be remedied by the legislature relates to the period during which provisions of Section 143(2) of the Act have been interpreted as controlling limitation specified for assessment, re-assessment or recomputation under section 153(2) of the Act, which, according to the amendment, was not intended. The classification has object of saving assessment, re-assessment or recomputation in accordance with the limitation already specified. The tests for compliance of Article 14 are fully met by the legislation in question.

8. Accordingly, we do not find any merit in the petition. The same is dismissed.

(Adarsh Kumar Goel)
Judge

October 24, 2006 (Rajesh Bindal)
'gs' Judge